



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

October 29, 1949

Hon. Hall H. Logan, Chairman  
State Board of Control  
Austin, Texas

Opinion No. V-941

Re: Authority of the Board  
of Control to handle  
utility contracts for  
eleemosynary institu-  
tions, institutions of  
higher learning and  
State departments.

Dear Mr. Logan:

You have requested an opinion concerning the authority of the Board of Control to handle utility contracts for the eleemosynary institutions not under its supervision, the institutions of higher learning and the State departments.

In answering, we assume your question is whether the services available from public utilities must be purchased by the Board of Control. We further assume that you refer only to power, light, telephone, gas, water, sewer, and similar services provided by connection with a community system and which may be obtained from only one source.

Considering first the eleemosynary institutions and the higher educational institutions it is our opinion that the statutes do not require that such utility services be purchased by the Board of Control.

The purchasing power of the Board of Control is governed by Chapter 3, Title 20, V.C.S., which creates the Board's purchasing division. When taken together, the statutes of this chapter point to the one idea: the purchase of supplies by competitive bidding. Provision is made for all phases of the purchase of supplies in this manner. Included are provisions for a mailing list, letting of the contracts after advertising, sealed bids and their requisites, rejection of certain bids by the Board, equal bids, separate bids, opening of bids and the requirement of a bond to accompany bids. Construing these statutes of Chapter 3 together, the purchasing power of the Board of Control is limited to only those items which are the proper subject of competitive bidding.

Hon. Hall H. Logan, page 2 (V-941)

A public utility is usually a monopoly operating under a franchise with the type of service defined and rates controlled. These factors make purchase of public utility services on the basis of competitive bids impracticable. The courts have recognized these conditions and have held that purchases of utility services do not come within statutes which require "supplies" to be purchased by competitive bidding. Morris v. Town of Louisburg, 33 S.E.2d 484 (N.C. Sup. 1945); Washington Fruit and Produce Co. v. City of Yakima, 100 P.2d 8 (Wash. Sup. 1940); Tanner v. Town of Auburn, 79 Pac. 494 (Wash. Sup. 1905); Gleason v. Dawson, 51 N.Y.S. 337 (App. Div. 1898); Drew v. Village of White Plains, 142 N.Y.S. 577 (App. Div. 1913); Milwaukee Electric Ry. and Light Co. v. City of Milwaukee, 181 N.W. 298 (Wis. Sup. 1921).

Public utility services are not "supplies" within the scope of the statutes and therefore the Board of Control would not be required to make such purchases.

We have not, in the absence of a specific question, considered the inclusion within a public utility contract of items other than the primary service to be furnished. Generally speaking, such a contract should cover nothing extraneous to the furnishing of service.

You have further inquired as to the Board of Control's authority to handle utility contracts for the State departments. The Board is designated as custodian of public buildings by Article 665, V.C.S. Therefore, utility service used in connection with the maintenance of buildings in the custody of the Board should be procured by the Board.

#### SUMMARY

The Board of Control is not required to let public utility contracts for the eleemosynary institutions not under its supervision or those of institutions of higher learning. Utility service used in connection with the maintenance of buildings in the custody of the Board of

Hen. Hall H. Logan, page 3 (V-941)

Control should be procured by the Board.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

*Thomas E. Taulbee*  
Thomas E. Taulbee  
Assistant

TET:rt:gw

APPROVED

*Joe R. Greenhill*  
FIRST ASSISTANT  
ATTORNEY GENERAL